

1 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
2 Michael Freund & Associates
1919 Addison Street, Suite 105
3 Berkeley, CA 94704
4 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

5 Attorneys for Plaintiff Environmental Research Center, Inc.

6 Charles A. McPhee, Jr. SBN 57774
7 Dean W. McPhee SBN 62104
8 McPhee & McPhee
Attorneys at Law
9 1300 Clay Street, Suite 600
Oakland, CA 94612
10 Telephone: (510) 567-0500
11 Facsimile: (510) 567-0524

12 Attorneys for Defendant
CTC FOOD INTERNATIONAL, INC., individually and doing
13 business as ASIAN FOOD GROCER

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF ALAMEDA**

16 **ENVIRONMENTAL RESEARCH**
17 **CENTER, INC., a California non-profit**
18 **corporation**

19 **Plaintiff,**

20 **vs.**

21 **CTC FOOD INTERNATIONAL, INC.,**
22 **individually and doing business as ASIAN**
23 **FOOD GROCER, and DOES 1-100**

24 **Defendants.**

CASE NO. RG17856084

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 7, 2017
Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On April 7, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
28 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant

1 to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition
2 65"), against CTC Food International, Inc., individually and doing business as Asian Food
3 Grocer ("CTC Food International") and Does 1-100. In this action, ERC alleges that several of
4 CTC Food International's shellfish products imported, marketed, distributed and/or sold by CTC
5 Food International contain lead and/or cadmium, chemicals listed under Proposition 65 as
6 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
7 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
8 "Covered Product" or collectively as "Covered Products") are: (1) CTC Food Int'l Inc. Orchids
9 Smoked Clams in Cottonseed Oil (lead), (2) CTC Food Int'l Inc. Orchids Smoked Mussels in
10 Cottonseed Oil (lead), and (3) CTC Food Int'l Inc. Orchids Smoked Oysters in Cottonseed Oil
11 (lead and cadmium).

12 1.2 ERC and CTC Food International are hereinafter referred to individually as a
13 "Party" or collectively as the "Parties."

14 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
15 causes, helping safeguard the public from health hazards by reducing the use and misuse of
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
17 and encouraging corporate responsibility.

18 1.4 For purposes of this Consent Judgment, the Parties agree that CTC Food
19 International is a business entity that has employed ten or more persons at all times relevant to this
20 action, and qualifies as a "person in the course of business" within the meaning of Proposition 65.
21 CTC Food International imports, markets, distributes, and/or sells the Covered Products.

22 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
23 dated December 22, 2016 that was served on the California Attorney General, other public
24 enforcers, and CTC Food International ("Notice"). A true and correct copy of the 60-Day Notice
25 dated December 22, 2016 is attached hereto as Exhibit A and incorporated herein by reference.
26 More than 60 days have passed since the Notice was served on the Attorney General, public
27 enforcers, and CTC Food International and no designated governmental entity has filed a
28 complaint against CTC Food International with regard to the Covered Products or the alleged

1 violations.

2 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead and/or cadmium without first providing clear and reasonable
4 warnings in violation of California Health and Safety Code section 25249.6. CTC Food
5 International denies all material allegations contained in the Notice and Complaint.

6 1.7 The Parties have entered into this Consent Judgment in order to settle,
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
9 be construed as an admission by any of the Parties or by any of their respective officers,
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
11 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
12 violation of law.

13 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
15 current or future legal proceeding unrelated to these proceedings.

16 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
17 a Judgment by this Court.

18 2. JURISDICTION AND VENUE

19 For purposes of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over CTC Food International as to the acts alleged in the Complaint, that venue is proper in
23 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
24 final resolution of all claims up through and including the Effective Date which were or could
25 have been asserted in this action based on the facts alleged in the Notice and Complaint.

26 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

27 3.1 Beginning on the Effective Date, CTC Food International shall be permanently
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

1 California", or directly selling in the State of California, any Covered Products which expose a
2 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
3 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
4 meets the warning requirements under Section 3.2. For all Covered Products, if the product has
5 been manufactured and packaged into final form for consumer sale and use prior to the
6 Effective Date, then such Covered Products may be sold and/or distributed into the State of
7 California at any time. One (1) month after the Compliance Date, CTC Food International shall
8 provide ERC with the last packaging date and any additional identification for the Covered
9 Products which have been manufactured and placed in final form for consumer distribution on
10 or before the Effective Date.

11 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
12 of California" shall mean to directly ship a Covered Product into California for sale in
13 California or to sell a Covered Product to a distributor that CTC Food International knows or
14 has reason to know will sell the Covered Product in California.

15 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure
16 Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be
17 calculated using the following formula: micrograms of lead or cadmium per gram of product,
18 multiplied by grams of product per serving of the product (using the largest serving size
19 appearing on the product label), multiplied by servings of the product per day (using the largest
20 number of servings in a recommended dosage appearing on the product label), which equals
21 micrograms of lead or cadmium exposure per day. If no recommended daily serving size is
22 provided on the label, then the daily serving size shall equal one.

23 3.2 Clear and Reasonable Warnings

24 If CTC Food International is required to provide a warning pursuant to Section 3.1, the
25 following warning must be utilized ("Warning"):

26 **CALIFORNIA PROPOSITION 65 WARNING:** Consuming this product can expose
27 you to chemicals including lead which is [are] known to the State of California to cause
28 [cancer and] birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov/food.

1 CTC Food International shall use the phrase "cancer and" in the Warning if CTC Food
2 International has reason to believe that the "Daily Lead Exposure Level" is greater than 15
3 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
4 3.4 or if CTC Food International has reason to believe that another Proposition 65 chemical is
5 present which may require a cancer warning.

6 The Warning shall be securely affixed to or printed upon the container or label of each
7 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
8 appear on the product description page when a California delivery address is indicated for any
9 purchase of any Covered Product. An asterisk or other identifying method must be utilized to
10 identify which products on the product description page are subject to the Warning.

11 The Warning shall be at least the same size as the largest of any other health or safety
12 warnings also appearing on its website or on the label or container of CTC Food International's
13 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
14 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
15 average lay person shall accompany the Warning. Further no statements may accompany the
16 Warning that state or imply that the source of the listed chemical has an impact on or results in a
17 less harmful effect of the listed chemical.

18 CTC Food International must display the above Warning with such conspicuousness, as
19 compared with other words, statements, design of the label, container, or on its website, as
20 applicable, to render the Warning likely to be read and understood by an ordinary individual under
21 customary conditions of purchase or use of the product.

22 Nothing in this Consent Judgment shall limit CTC Food International's ability to add
23 another Proposition 65 chemical to the warning if CTC Food International has reason to believe
24 that another Proposition 65 chemical is present in the product. Additionally nothing in this
25 Consent Judgment shall limit CTC Food International's ability to cease sales of any of the
26 Covered Products.

27 3.3 Reformulated Covered Products

28 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no

greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality control methodology described in Section 3.4.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, CTC Food International shall arrange for lead and/or cadmium testing of the Covered Products at least once a year for a minimum of five consecutive years by arranging for testing of five randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which CTC Food International intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of five consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the five-year testing period, CTC Food International changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, CTC Food International shall test that Covered Product annually for at least four (4) consecutive years after such change is made.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five (5) randomly selected samples of the Covered Products will be controlling.

3.4.3 All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed to in writing by the Parties and approved by the Court through entry of a modified consent judgment.

3.4.4 All testing pursuant to this Consent Judgment shall be performed by an independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the
2 United States Food & Drug Administration.

3 3.4.5 Nothing in this Consent Judgment shall limit CTC Food International's
4 ability to conduct, or require that others conduct, additional testing of the Covered Products,
5 including the raw materials used in their manufacture.

6 3.4.6 Within thirty (30) days of ERC's written request, CTC Food
7 International shall deliver lab reports obtained pursuant to Section 3.4 to ERC. CTC Food
8 International shall retain all test results and documentation for a period of five years from the
9 date of each test.

10 4. SETTLEMENT PAYMENT

11 4.1 In full satisfaction of all potential civil penalties, additional settlement
12 payments, attorney's fees, and costs, CTC Food International shall make a total payment of
13 \$90,000.00 ("Total Settlement Amount") to ERC by wire transfer to ERC's escrow account, for
14 which ERC will give CTC Food International the necessary account information. The Total
15 Settlement Amount shall be paid on the following schedule ("Due Dates"):

- 16 1. \$50,000.00 within 5 days of the Effective Date
- 17 2. \$20,000.00 within 95 days of the Effective Date
- 18 3. \$20,000.00 within 185 days of the Effective Date

19 The Total Settlement Amount shall be apportioned as follows:

20 4.2 \$13,482.19 shall be considered a civil penalty pursuant to California Health and
21 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$10,111.64) of the civil penalty to
22 the Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in the Safe
23 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
24 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,370.55) of the civil penalty.

25 4.3 \$10,699.01 shall be distributed to ERC as reimbursement to ERC for reasonable
26 costs incurred in bringing this action.

27 4.4 \$10,111.63 shall be distributed to ERC as an Additional Settlement Payment
28 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and

1 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
2 caused by Defendant in this matter. These activities are detailed below and support ERC's
3 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
4 supplement products in California. ERC's activities have had, and will continue to have, a direct
5 and primary effect within the State of California because California consumers will be benefitted
6 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
7 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
8 the products.

9 Based on a review of past years' actual budgets, ERC is providing the following list of
10 activities ERC engages in to protect California consumers through Proposition 65 citizen
11 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
12 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
13 supplement products that may contain lead and/or cadmium and are sold to California
14 consumers. This work includes continued monitoring and enforcement of past consent judgments
15 and settlements to ensure companies are in compliance with their obligations thereunder, with a
16 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
17 also includes investigation of new companies that ERC does not obtain any recovery through
18 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
19 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
20 maintaining a case file, testing products from these companies, providing the test results and
21 supporting documentation to the companies, and offering guidance in warning or implementing a
22 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
23 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
24 numbers of contaminated products that reach California consumers by providing access to free
25 testing for lead in dietary supplement products (Products submitted to the program are screened
26 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
27 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
28 that submitted the product).

1 ERC shall be fully accountable in that it will maintain adequate records to document and
2 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
3 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
4 shall provide the Attorney General, within thirty days of any request, copies of documentation
5 demonstrating how such funds have been spent.

6 4.5 \$24,995.00 shall be distributed to Michael Freund as reimbursement of ERC's
7 attorney's fees, \$1,375.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
8 attorney's fees, while \$29,337.17 shall be distributed to ERC for its in-house legal fees. Except
9 as explicitly provided herein, each Party shall bear its own fees and costs.

10 4.6 In the event that CTC Food International fails to remit any of the payments
11 owed under Section 4 of this Consent Judgment on or before their respective Due Dates, CTC
12 Food International shall be deemed to be in material breach of its obligations under this
13 Consent Judgment. ERC shall provide written notice of the delinquency to CTC Food
14 International via electronic mail. If CTC Food International fails to deliver the the delinquent
15 payment within five (5) days from the written notice, the Total Settlement Amount shall be
16 immediately due and owing and shall accrue interest at the statutory judgment interest rate
17 provided in the California Code of Civil Procedure section 685.010. Additionally, CTC Food
18 International agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect
19 the payment due under this Consent Judgment.

20 5. MODIFICATION OF CONSENT JUDGMENT

21 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
22 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
23 (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a modified
24 consent judgment.

25 5.2 If CTC Food International seeks to modify this Consent Judgment under Section
26 5.1, then CTC Food International must provide written notice to ERC of its intent ("Notice of
27 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
28 Intent, then ERC must provide written notice to CTC Food International within thirty (30) days

1 of receiving the Notice of Intent. If ERC notifies CTC Food International in a timely manner of
2 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
3 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
4 days of the Notice of Intent. Within thirty (30) days of such meeting, if ERC disputes the
5 proposed modification, ERC shall provide to CTC Food International a written basis for its
6 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an
7 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in
8 writing to different deadlines for the meet-and-confer period.

9 5.3 Where the meet-and-confer process does not lead to a joint motion or application
10 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
11 on its own.

12 6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT 13 JUDGMENT

14 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
15 this Consent Judgment.

16 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
17 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
18 inform CTC Food International in a reasonably prompt manner of its test results, including
19 information sufficient to permit CTC Food International to identify the Covered Products at
20 issue. CTC Food International shall, within thirty (30) days following such notice, provide ERC
21 with testing information, from an independent third-party laboratory meeting the requirements
22 of Sections 3.4.3 and 3.4.4, demonstrating CTC Food International's compliance with the
23 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to
24 ERC taking any further legal action.

25 7. APPLICATION OF CONSENT JUDGMENT

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
28 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,

1 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
2 application to any Covered Product which is distributed or sold exclusively outside the State of
3 California and which is not used by California consumers.

4 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
6 on behalf of itself and in the public interest, and CTC Food International and its respective
7 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
8 suppliers, franchisees, licensees, customers (not including private label customers of CTC Food
9 International defined as customers of CTC Food International who place their own label on the
10 product), distributors, wholesalers, retailers, and all other upstream and downstream entities in
11 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of
12 any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public
13 interest, hereby fully releases and discharges the Released Parties from any and all claims,
14 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
15 expenses asserted, or that could have been asserted from the handling, use, or consumption of
16 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
17 regulations arising from the failure to provide Proposition 65 warnings on the Covered
18 Products regarding lead and/or cadmium up to and including the Effective Date.

19 **8.2** ERC on its own behalf only, and CTC Food International on its own behalf
20 only, further waive and release any and all claims they may have against each other for all
21 actions or statements made or undertaken in the course of seeking or opposing enforcement of
22 Proposition 65 in connection with the Notice and Complaint up through and including the
23 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
24 right to seek to enforce the terms of this Consent Judgment.

25 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
27 discovered. ERC on behalf of itself only, and CTC Food International on behalf of itself only,
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.
2 ERC and CTC Food International acknowledge that the claims released in Sections 8.1 and 8.2
3 above may include unknown claims, and nevertheless waive California Civil Code section
4 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
8 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
9 OR HER SETTLEMENT WITH THE DEBTOR.

8 ERC on behalf of itself only, and CTC Food International on behalf of itself only, acknowledge
9 and understand the significance and consequences of this specific waiver of California Civil
10 Code section 1542.

11 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
13 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

14 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of CTC Food
16 International's products other than the Covered Products.

17 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

18 In the event that any of the provisions of this Consent Judgment are held by a court to be
19 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

20 10. GOVERNING LAW

21 The terms and conditions of this Consent Judgment shall be governed by and construed in
22 accordance with the laws of the State of California.

23 11. PROVISION OF NOTICE

24 All notices required to be given to either Party to this Consent Judgment by the other shall
25 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
26 email may also be sent.

27 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

28 Chris Heptinstall, Executive Director, Environmental Research Center

1 3111 Camino Del Rio North, Suite 400
2 San Diego, CA 92108
3 Tel: (619) 500-3090
4 Email: chris_erc501c3@yahoo.com

5 With a copy to:
6 Michael Freund
7 Ryan Hoffman
8 Michael Freund & Associates
9 1919 Addison Street, Suite 105
10 Berkeley, CA 94704
11 Telephone: (510) 540-1992
12 Facsimile: (510) 540-5543

13 **FOR CTC FOOD INTERNATIONAL, INC., individually**
14 **and doing business as ASIAN FOOD GROCER**

15 Ike Fukumoto
16 CTC Food International, Inc.
17 50 West Ohio Avenue
18 Richmond, CA 94804
19 (650) 219-7979

20 With a copy to:
21 Charles A. McPhee, Jr.
22 Dean W. McPhee
23 McPhee & McPhee
24 Attorneys at Law
25 1300 Clay Street, Suite 600
26 Oakland, CA 94612
27 Telephone: (510) 567-0500
28 Facsimile: (510) 567-0524

21 **12. COURT APPROVAL**

22 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
24 Consent Judgment.

25 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
27 prior to the hearing on the motion.
28

1 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

4 This Consent Judgment may be executed in counterparts, which taken together shall be
5 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
6 as the original signature.

7 **14. DRAFTING**

8 The terms of this Consent Judgment have been reviewed by the respective counsel for each
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
10 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
11 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
12 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
13 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
14 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
15 equally in the preparation and drafting of this Consent Judgment.

16 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

17 If a dispute arises with respect to either Party's compliance with the terms of this Consent
18 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
19 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
20 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

21 **16. ENFORCEMENT**

22 ERC may, by motion or order to show cause before the Superior Court of Alameda
23 County, enforce the terms and conditions contained in this Consent Judgment. In any action
24 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
25 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
26 To the extent the failure to comply with the Consent Judgment constitutes a violation of
27 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
28 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by

1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments, and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

13 This Consent Judgment has come before the Court upon the request of the Parties. The
14 Parties request the Court to fully review this Consent Judgment and, being fully informed
15 regarding the matters which are the subject of this action, to:

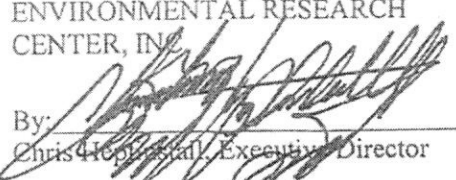
16 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
17 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
18 been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21
22 **IT IS SO STIPULATED:**

23 Dated: 8/29/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

24 By: 
25 Chris Hopwood, Executive Director

1 Dated: Sept. 05, 2017

CTC FOOD INTERNATIONAL, INC.,
individually and doing business as ASIAN
FOOD GROCER

By: [Signature]
Its: Ike Fukumoto
CEO

7 APPROVED AS TO FORM:

8 Dated: 9/5/, 2017

MICHAEL FREUND & ASSOCIATES

By: [Signature]
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

14 Dated: Sept. 05, 2017

MCPHEE & MCPHEE

By: [Signature]
Charles A. McPhee, Jr.
Dean W. McPhee
Attorneys for Defendant Defendant CTC
Food International, Inc., individually and
doing business as Asian Food Grocer

21 ORDER AND JUDGMENT

22 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
23 approved and Judgment is hereby entered according to its terms.

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: _____, 2017

Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

December 22, 2016

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

CTC Food International, Inc., individually and doing business as Asian Food Grocer

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- CTC Food Int'l Inc. Orchids Smoked Clams in Cottonseed Oil - Lead
- CTC Food Int'l Inc. Orchids Smoked Mussels in Cottonseed Oil - Lead
- CTC Food Int'l Inc. Orchids Smoked Oysters in Cottonseed Oil - Lead, Cadmium

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 22, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to CTC Food International, Inc., individually and doing business as Asian Food Grocer, and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by CTC Food International, Inc., individually and doing business as Asian Food Grocer

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 22, 2016



Michael Freund

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On December 22, 2016, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
CTC Food International, Inc. individually
and doing business as Asian Food Grocer
131 West Harris Avenue
South San Francisco, CA 94080

Current President or CEO
CTC Food International, Inc. individually
and doing business as Asian Food Grocer
50 West Ohio Avenue
Richmond, CA 94804

Current President or CEO
CTC Food International, Inc. individually
and doing business as Asian Food Grocer
385 South 6th Avenue
City of Industry, CA 91746

Ike Fukumoto
(CTC Food International, Inc. individually
and doing business as Asian Food Grocer's
Registered Agent for Service of Process)
709 25th Avenue
San Francisco, CA 94121

On December 22, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On December 22, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
December 22, 2016
Page 5

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

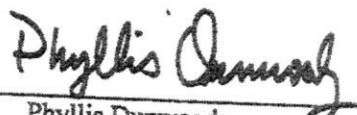
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On December 22, 2016, I served the following documents: NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on December 22, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations

(<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: December 22, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

☐ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

☐ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

☐ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

☐ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: December 22, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- ☐ Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- ☐ Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- ☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2014

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
 2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
 3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
 4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
 5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
- This database is current through 9/18/15 Register 2015, No. 38
- 27 CCR Appendix A, 27 CA ADC Appendix A